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List of Counsel of Record



HCDistrictclerk.com

JOHN-MILLER, DONALD B (I/D/B/A EDAM GBERE
INTERNAT vs. HOWELL, AUSTIN
Cause: 201961060 CDI: 7 Court: 165

9/25/2019

SUMMARY

CASE DETAILS

File Date	8/28/2019
Case (Cause) Location	
Case (Cause) Status	Active - Civil
Case (Cause) Type	FRAUD
Next/Last Setting Date	N/A
Jury Fee Paid Date	8/28/2019

CURRENT PRESIDING JUDGE

Court	165 th
Address	201 CAROLINE (Floor: 12) HOUSTON, TX 77002 Phone:7133686270
JudgeName	URSULA A. HALL
Court Type	Civil

Chronological Case History

Style	JOHN-MILLER, DONALD B (I/D/B/A EDAM GBERE INTERNAT vs. HOWELL, AUSTIN				
Case Number	201961060	Case Status	Active - Civil	Case Type	FRAUD
File Court	165	File Date	8/28/2019	Next Setting	N/A

Date	Type	Description
N/A	SERVICE	PERSON SERVED: HOWELL, AUSTIN SERVICE TYPE: CITATION INSTRUMENT: APPLICATION FOR WRIT OF CERTIORARI
N/A	SERVICE	PERSON SERVED: TIDEWATER MARINE INTERNATIONAL INC (A CLAIMED CORPORATION) BY SERVING ITS PURPORTED MANAGER AUSTIN HOWELL OR WHEREVER HE MAY BE FOUND SERVICE TYPE: CITATION CORPORATE INSTRUMENT: APPLICATION FOR WRIT OF CERTIORARI
N/A	SERVICE	PERSON SERVED: TIDEWATER MARINE LLC BY SERVING ITS REGISTERED AGENT TCT CORPORATION SYSTEM SERVICE TYPE: CITATION (CERTIFIED) INSTRUMENT: APPLICATION FOR WRIT OF CERTIORARI
8/28/2019	ACTIVITY	JURY FEE PAID (TRCP 216) COURT: 165
8/28/2019	DOCUMENT	ORIGINAL PETITION COURT: 165 ATTORNEY: EASLEY, TOBY C. PERSON FILING: JOHN-MILLER, DONALD B (I/D/B/A EDAM GBERE INTERNAT
8/28/2019	DOCUMENT	ORIGINAL PETITION COURT: 165 ATTORNEY: EASLEY, TOBY C. PERSON FILING: EDAM GBERE INTERNATIONAL SERVICES
8/28/2019	DOCUMENT	ORIGINAL PETITION COURT: 165 ATTORNEY: EASLEY, TOBY C. PERSON FILING: EDAM GBERE NIGERIA LIMITED
8/28/2019	DOCUMENT	ORIGINAL PETITION COURT: 165 ATTORNEY: EASLEY, TOBY C. PERSON FILING: D1 INTERGRATED SERVICES
8/28/2019	DOCUMENT	ORIGINAL PETITION COURT: 165 ATTORNEY: EASLEY, TOBY C. PERSON FILING: CAROLINE MARINE SERVICES

HCDistrictclerk.com

JOHN-MILLER, DONALD B (I/D/B/A EDAM GBERE
INTERNAT vs. HOWELL, AUSTIN
Cause: 201961060 CDI: 7 Court: 165

9/25/2019

NOTICES

No Notices found.

SERVICES

Type	Status	Instrument	Person	Requested	Issued	Served	Returned	Received	Tracking	Deliver To
CITATION CORPORATE	SERVICE ISSUED/IN POSSESSION OF SERVING AGENCY	ORIGINAL PETITION	TIDEWATER MARINE INTERNATIONAL INC (A CLAIMED CORPORATION) BY SERVING	8/28/2019	9/3/2019				73665517	CIV AGCY-CIVILIAN SERVICE AGENCY
6002 RODGERDALE SUITE 600 HOUSTON TX 77072										
CITATION (CERTIFIED)	SERVICE ISSUED/IN POSSESSION OF SERVING AGENCY	ORIGINAL PETITION	TIDEWATER MARINE LLC BY SERVING ITS REGISTERED AGENT	8/28/2019	9/3/2019				73665518	CVC/CTM SVCE BY CERTIFIED MAIL
1999 BRYAN STREET SUITE 900 DALLAS TX 75201										
CITATION	SERVICE ISSUED/IN POSSESSION OF SERVING AGENCY	ORIGINAL PETITION	HOWELL, AUSTIN	8/28/2019	9/3/2019				73665519	CIV AGCY-CIVILIAN SERVICE AGENCY
6002 ROGERDALE SUITE 600 HOUSTON TX 77072										

8/28/2019 3:27:59 PM
Marilyn Burgess - District Clerk
Harris County
Envelope No: 36361980
By: HUTCHINSON, MIAEDA A
Filed: 8/28/2019 3:27:59 PM

2019-61060 / Court: 165

E

1214 Elgin Street
Houston, TX 77004

TOBY C. EASLEY
Attorney at Law
EASLEY LAW FIRM, P.L.L.C.

Office: 713-223-4000
E-Mail: Toby@Toby-Law.com

August 28, 2019

Ms. Marilyn Burgess
Harris County District Clerk
201 Caroline, Suite 420
Houston, TX 77002

Re: Request for Issuance of Citations
Donald John-Miller, et al. v. Austin Howell, et al.

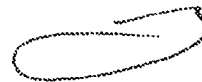
Dear Ms. Burgess:

Please issue citations for the following Defendants in the above-referenced matter:

1. **Austin Howell**
6002 Rogerdale, Suite 600
Houston, TX 77072
(For Service by Private Process; Please Place in Box 111 for David Garza, phone 832-498-3554)
2. **Tidewater Marine International**
c/o Austin Howell
6002 Rogerdale, Suite 600
Houston, TX 77072
(For Service by Private Process; Please Place in Box 111 for David Garza, phone 832-498-3554)
3. **Tidewater Marine, LLC**
c/o CT Corporation System
1999 Bryan St., Suite 900
Dallas, TX 75201
(For Service by Certified Mail, through District Clerk)

If you have any questions, please call me at 713-223-4000.

Respectfully,



Toby C. Easley



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office
this September 25, 2019

Certified Document Number: 86872366 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

NO. _____

[illegible]

HARRIS COUNTY, TEXAS

Parties

3. Donald B. John-Miller, individually and d/b/a Edam Gbere International Services and d/b/a Edam Gbere Nigeria Limited and d/b/a D1 Integrated Services and d/b/a Caroline Marine Services, Ltd., Plaintiff, is an individual residing in Texas with his principal place of business in Harris County, Texas.

4. Austin Howell, Defendant, is an individual resident of Texas. This defendant may be served with process at his place of business 6002 Rogerdale, Suite 600, Houston, Texas 77072, or wherever he may be found.

5. Tidewater Marine International, Inc., Defendant, is a claimed corporation operating in Texas but is not registered with the Texas Secretary of State. This Defendant is believed to be a wholly owned subsidiary of Defendant Tidewater Marine, LLC. This defendant may be served with process through its purported manager, Austin Howell, at 6002 Rogerdale, Suite 600, Houston, Texas 77072, or wherever he may be found.

6. Tidewater Marine, LLC, Defendant, is a Louisiana company with a principal place of business in Houston, Texas. This defendant may be served with process through its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

Jurisdiction & Venue

7. Venue is proper in Harris County because more than one of the named defendants maintain fixed and established places of business in Harris County, Texas, at the time this lawsuit is brought. In addition, Defendant Austin Howell is a Texas resident. TEX. CIV. PRAC. & REM. CODE §15.002. The court has jurisdiction over the controversy because the damages and relief requested are within the jurisdictional limits of the court.

Facts

8. On March 12, 2019, Defendants, through Howell, contracted to sell the Merchant Vessel (M/V) Lourdes Tide, along with another vessel, to EGNL. When Howell was told Edam Gbere only wanted to buy one of the vessels, the Lourdes Tide, as allowed under the agreement, Howell wrongfully charged a higher price and kept the funds. Instead of the listed \$450,000 price, Howell charged, and kept, another \$110,000 (a wire transfer made on 6/5/2019 for \$110,000). Demand was made on Defendants on August 14, 2019 to return the overcharged funds. In response, Defendants have made excuses by claiming “confusion” and have refused to return the funds. These claims of confusion were made through Daniel Hudson, an associate general counsel with TMLLC.

9. On June 14, 2019, Defendants contracted to sell the Montgomery Tide to Caroline Marine Services, Ltd., another assumed name of Miller. In this transaction Defendants sold the vessel then later canceled the contract after accepting a \$100,000 deposit from Caroline. Defendants, of course, then refused to return the deposit. Demand was made on Defendants on August 14, 2019 to return the deposit. In response, Defendants have made excuses by claiming “confusion” and have refused to return the funds. These claims of confusion were made through Daniel Hudson, an associate general counsel with TMLLC.

10. On July 17, 2019, Defendants contracted to sell the M/V Soyo Tide to D1 Integrated Services, an assumed name of Miller. After Edam Gbere International, a unit of Edam Gbere Nigeria Limited, paid \$70,000 to Defendants (by wire transfers on 7/24/2019 and 8/2/2019), Defendants canceled the contract yet kept the funds. Demand was made on Defendants on August 14, 2019 to return the funds. In response, Defendants have made excuses by claiming “confusion”

and have refused to return the funds. These claims of confusion were made through Daniel Hudson, an associate general counsel with TMLLC.

11. As a result of Defendants' actions, they have wrongfully kept and retained \$280,000 belonging to Plaintiff, not to mention another \$30,000 they charged for "storage" of the Lourdes Tide in order to extort the additional payments.

12. On August 14, 2019, Plaintiff made a written demand on Defendants to return the funds, stating their breaches of the contracts and wrongfully keeping Plaintiff's funds. That demand was made in accordance with TEX. CIV. PRAC. & REM. CODE §§ 38.001 *et seq.* To date, there has been no formal written response, yet Defendants have kept the funds.

13. All of Defendants' actions took place in Harris County, Texas, through the office of Tidewater Marine, LLC, and its related entities and employees. All invoices, contracts, and correspondence went through the office located at 6002 Rogerdale, Suite 600, Houston, Texas 77072. Howell, a Texas resident, conducted this business through the Rogerdale office.

Causes of Action

Breach of Contract

14. Defendants breached each of the contracts as alleged above. Defendants charged \$110,000 over the purchase price for the Lourdes Tide and kept the funds even after demand was made to return them. Defendants breached the contract for the Soyo Tide after receipt of \$70,000; despite claiming to cancel the agreement Defendants kept the funds. Defendants breached the contract for the Montgomery Tide in the same manner—taking a \$100,000 deposit, cancelling the agreement, then refusing to return the funds. Daniel Hudson said the funds could be returned, but now claims otherwise. Plaintiff performed his obligations under the contracts.

15. As a result of Defendants' breaching the several contracts, Plaintiff has incurred damages

as alleged below.

Unjust Enrichment and Constructive Trust

16. It is anticipated that the evidence will show Defendants, each alone or together with others, obtained benefits from Plaintiff by fraud, duress, and/or taking undue advantage. As such, Defendants, each alone or together with others, would have been unjustly enriched and have actually or constructively defrauded Plaintiff. It would be unconscionable for Defendants to retain any interest rightfully belonging to Plaintiff by keeping the funds and not returning them to Plaintiff. Unless a constructive trust is imposed on all property, profits, or benefits rightfully belonging to Plaintiff, Defendants will be unjustly enriched and will profit by their wrongdoing at Plaintiff's expense.

17. Defendants are in possession of \$280,000 in funds that belong to Plaintiff.

Common Law Fraud and Fraudulent Inducement

18. It is anticipated that the evidence will show that Defendants made material and false representations to Plaintiff regarding the contracts, deposits, and cancellation charges. Defendants, specifically through Howell, made such false representations, knew the representations were false and/or made them recklessly, as a positive assertion, without knowledge of their truth. Defendants made the representations with the intent that Plaintiff would rely upon the false representations and Plaintiff justifiably relied upon the same in making the deposits and honoring their obligations under the contracts. It now appears that Defendants had no intent to abide by any of the contracts, intending only to get and keep funds from Plaintiff.

19. Additionally, and/or alternatively, Defendants' material, false representations were made to induce Plaintiff into binding agreements and Plaintiff justifiably relied upon the representations to their detriment.

20. By way of example only, and without limitation, Defendants took deposits on two of the contracts before claiming the contracts were canceled; Defendants then kept the funds, refusing to return the deposits.

Theft Liability Act

21. Defendants stole money from Plaintiff in violation of the Theft Liability Act. TEX. CIV. PRAC. & REM. CODE Ch. 134. Defendants stole the money by deceiving Plaintiff into paying deposits and additional charges that Defendants then kept and refused to return. Defendants intended to deprive Plaintiff of the money and committed theft by using deception to induce Plaintiff to make the payments. Plaintiff incurred damages as alleged below.

Damages

22. Plaintiff have incurred damages of at least \$280,000. These were wire transfer funds kept by Defendants which they have refused to return. No contract allowed for Defendants to keep these funds.

Exemplary Damages

23. Plaintiff also request exemplary damages in accordance with TEX. CIV. PRAC. & REM. CODE § 41.003(a).

Attorneys' Fees

24. Defendants have made it necessary for Plaintiff to retain the undersigned attorney and law firm to file this lawsuit. This claim was timely presented to Defendants, but it was necessary to sue in order to obtain relief since Defendants have refused, and continue to refuse, to return the funds. Instead, Daniel Hudson wants to meet to discuss the matters; yet he has consistently delayed any attempts to meet. Plaintiff, therefore, seek reimbursement for their reasonable and necessary attorney fees under Tex. Civ. Prac. & Rem. Code §§ 38.001, *et seq.*

Conditions Precedent

25. All conditions precedent have been performed or have occurred as required by TEX. R. CIV. P. 54.

Rule 47 Statement; Not Expedited Action

26. Plaintiff seeks monetary relief at this time estimated to be of over \$200,000 but less than \$1,000,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees, together with non-monetary relief. Plaintiff does not consider this an expedited action in accordance with TEX. R. CIV. P. 169.

Disclosure Request

27. Pursuant to Texas Rule of Civil Procedure 194, Plaintiff requests that each defendant disclose, within 50 days of service of this request, the information or material described in TEX. R. CIV. P. 194.2(a)-(l).

Demand for Jury Trial

28. Plaintiff respectfully demands a jury trial on all issues in this cause of action in accordance with TEX. R. CIV. P. 216. This request is made more than a reasonable time prior to the trial of this matter. The appropriate jury fee is being paid with the filing of this demand.

Prayer

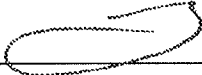
29. For these reasons, Plaintiff asks that Defendants be cited to appear and answer, and that Plaintiff have judgment against Defendants, jointly and severally, for:

- a. Actual damages in an amount of at least \$280,000;
- b. Exemplary damages;
- c. Reasonable and necessary attorney fees;
- d. Prejudgment and post-judgment interest as allowed by law;

- e. Costs of suit; and
- f. All other relief this court deems appropriate.

Respectfully submitted:

EASLEY LAW FIRM, P.L.L.C.



Toby C. Easley
Texas Bar No. 00787411
1214 Elgin Street
Houston, Texas 77004
Voice: 713-223-4000
Email: Toby@Toby-Law.com

ATTORNEYS FOR PLAINTIFF



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this September 25, 2019

Certified Document Number: 86872365 Total Pages: 8

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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2019-61060

7018 1830 0001 4425 4053

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee \$ 3.50 SEP 04 2019
Extra Services & Fees (Add \$ for each extra service)
☐ Return Receipt (hardcopy) District Clerk
☐ Return Receipt (electronic)
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required
☐ Adult Signature Restricted Delivery \$

Postage \$ 1.10
2019-61060 105TH
750

TIDEWATER MARINE LLC
C/O CORPORATION SYSTEM
1999 BRYAN STREET SUITE 900
DALLAS TX 75201

PS Form 3800, April 2013 PSN 7530-02-000-9004 See Reverse for Instructions

09-04-19



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this September 25, 2019

Certified Document Number: 87050577 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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Marilyn Burgess

HARRIS COUNTY DISTRICT CLERK

201 Caroline | P.O. Box 4651 | Houston, Texas 77210-4651 | 832-927-5800 |

www.hcdistrictclerk.com

Civil Process Pick-Up Form

CAUSE NUMBER: 2019-61060
 ATY _____ CIV X COURT 105th

REQUESTING ATTORNEY/FIRM NOTIFICATION

*ATTORNEY: Easley, Toby PH: 713-223-4000
 *CIVIL PROCESS SERVER: David Garza BOX: #111
 *PH: _____
 *PERSON NOTIFIED SVC READY: _____

Type of Service Document: CH
 Type of Service Document: CH
 Type of Service Document: _____
 Type of Service Document: _____
 Type of Service Document: _____

Tracking Number 73665519
 Tracking Number 73665517
 Tracking Number _____
 Tracking Number _____
 Tracking Number _____

Process papers prepared by: Brianna J. Denmon

Date: Sept. 3 2019 30 days waiting 10. 3 . 19

*Process papers released to: David
 (PRINT NAME)
0324983559
 *(CONTACT NUMBER) (SIGNATURE)
Monica Estrada
 *Process papers released by: _____
 (PRINT NAME)
Monica Estrada
 (SIGNATURE)
 * Date: 9/4, 2019 Time: 1:45 AM / PM

RECORDER'S MEMORANDUM
 This instrument is of poor quality
 at the time of imaging.

Revised 12-15-2014



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office
this September 25, 2019

Certified Document Number: 86972687 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

7018 1830 0001 4485 4053

CAUSE NO. 201961060

RECEIPT NO.

75.00 CTM

TR # 73665518

PLAINTIFF: JOHN-MILLER, DONALD B (I/D/B/A EDAM GBERE INTERNAT

In The 165th
Judicial District Court
of Harris County, Texas
165TH DISTRICT COURT
Houston, TX

vs.

DEFENDANT: HOWELL, AUSTIN

CITATION (CERTIFIED)

THE STATE OF TEXAS
County of HarrisTO: TIDEWATER MARINE LLC BY SERVING ITS REGISTERED AGENT
CT CORPORATION SYSTEM

1999 BRYAN STREET SUITE 900 DALLAS TX 75201

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSUREThis instrument was filed on the 28th day of August, 2019, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 3rd day of September, 2019, under my hand and seal of said Court.



mail Bureau

MARILYN BURGESS, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Issued at request of:
EASLEY, TOBY C.
1214 ELGIN STREET
HOUSTON, TX 77004
Tel: (713) 223-4000
Bar No.: 787411

Generated By: DENMON, BRIANNA JANEL 3B5//11314239

CLERK'S RETURN BY MAILING

Came to hand the _____ day of _____, _____, and executed by mailing to Defendant certified mail, return receipt requested, restricted delivery, a true copy of this citation together with an attached copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE to the following addressee at address:

ADDRESS

(a) ADDRESSEE

Service was executed in accordance with Rule 106
(2) TRCP, upon the Defendant as evidenced by the return receipt incorporated herein and attached hereto at

on _____ day of _____, _____
by U.S. Postal delivery to _____

This citation was not executed for the following reason: _____

MARILYN BURGESS, District Clerk
Harris County, TEXAS

By _____, Deputy

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

N. INT. CTM.P

73665518

7018 1830 0001 4425 4053

CAUSE NO. 201961060

RECEIPT NO.

75.00 CTM

TR # 73665518

PLAINTIFF: JOHN-MILLER, DONALD B (I/D/B/A EDAM GBERE INTERNAT
vs.
DEFENDANT: HOWELL, AUSTIN

In The 165th
Judicial District Court
of Harris County, Texas
165TH DISTRICT COURT
Houston, TX

CITATION (CERTIFIED)

THE STATE OF TEXAS
County of Harris

TO: TIDEWATER MARINE LLC BY SERVING ITS REGISTERED AGENT
CT CORPORATION SYSTEM

1999 BRYAN STREET SUITE 900 DALLAS TX 75201

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

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TO OFFICER SERVING:

This citation was issued on 3rd day of September, 2019, under my hand and seal of said Court.



Marilyn Burgess

Issued at request of:
EASLEY, TOBY C.
1214 ELGIN STREET
HOUSTON, TX 77004
Tel: (713) 223-4000
Bar No.: 787411

MARILYN BURGESS, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Generated By: DENMON, BRIANNA JANEL 3B5//11314239

CLERK'S RETURN BY MAILING

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ADDRESS

(a) ADDRESSEE

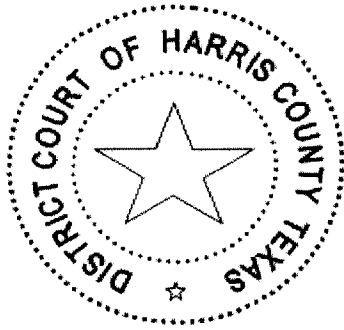
Service was executed in accordance with Rule 106
(2) TRCP, upon the Defendant as evidenced by the return receipt incorporated herein and attached hereto at

on _____ day of _____,
by U.S. Postal delivery to _____

This citation was not executed for the following reason: _____

MARILYN BURGESS, District Clerk
Harris County, TEXAS

By _____, Deputy



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this September 25, 2019

Certified Document Number: 86974912 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

COUNSEL OF RECORD

Toby C. Easley
Easley Law Firm, P.L.L.C.
1214 Elgin Street
Houston, Texas 77004
713-223-4000
Toby@Toby-Law.com

Attorneys for Plaintiff, Donald B. John-Miller, individually and d/b/a Edam Gbere International Services, and d/b/a Caroline Marine Services, Ltd.

Scott Jenkins
William C. Baldwin
Justin Quin
Jennifer David
Jones Walker LLP
201 St. Charles Ave., 48th Floor
New Orleans, LA 70170
504-582-8315
wbaldwin@joneswalker.com
Attorneys for Tidewater Marine LLC